

STATE GOVERNMENT*

Couched in the controversy about “phantom government,” the complete revision of the Administrative Procedure Act passed by the 1974 Legislature portended the most far reaching implications for the daily operations of state government. The Florida Department of Law Enforcement was reorganized. Important new programs were authorized in these areas: rural water and sewer services; consumer representation on the Public Service Commission; state disaster preparedness planning; and implementation of a statewide emergency telephone number system.

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ADMINISTRATIVE PROCEDURE ACT

The new Administrative Procedures Act, Conference Committee Substitute for Senate Bill 892 (Chapter 74-) constitutes a complete revision with the expressed legislative intent of making administrative agency rulemaking and adjudication procedures uniform.

In general scope, the act establishes statutory requirements applicable to rule-making and adjudicatory actions taken by an administrative “agency” and the judicial review thereof; creates a standing joint committee of the Legislature designated as the Administrative Procedures Committee to maintain a

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continuous review of the exercise of administrative rule-making authority and creates a Division of Administrative Hearings in the Department of Administration to provide hearing officers to conduct hearings required by the act or other law.

Definitions

An “agency” to which the act applies includes the Governor in the exercise of executive powers not derived from the Constitution; state officers, departments, departmental units, commissions, regional planning agencies, boards, districts, and authorities; and local government units, including counties and municipalities, to the extent made expressly subject to the act, by general or special law or existing judicial decision. The act does not apply to the Legislature or courts.

Among additional definitions, the act defines “rule” to mean an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency, including the amendment or repeal of a rule. The term does not include internal management memoranda or plans; legal opinions prior to their use in agency action; contractual provisions reached as a result of collective bargaining; or agricultural or citrus fruit marketing orders promulgated under Florida Statutes.

An “order” is defined in a comparative sense as a final agency decision reduced to writing which does not have the effect of a rule. The term “order” relates to the concept of “decisions which affect substantial interests” as used in the act. In the most specific portion of its definition, the term “party” means specifically named persons whose substantial interests are being determined in a proceeding, or any their person whose substantial interests will be affected by proposed agency action and who makes an appearance as a party.

Rule Making

Concerning rule-making, the provisions of the act do not apply to the judges of industrial claims or unemployment compensation appeals referees. The act affirmatively requires that each agency adopt rules describing its organization and course of operations; providing for practice and procedure in its administrative proceedings; and providing for the scheduling of hearings, meetings, and workshops, including agenda therefor.

Prior to the adoption of any rule other than an emergency rule, each agency is required to give public notice. General public notice is to be given by publication in the Florida Administrative Weekly (successor to the Florida Administrative Register) at least 21 days prior to the intended action. Notices of action proposed by school districts, community college districts, or government units with jurisdiction in of only one county or part thereof are excepted. Direct notice is to be given to persons named in the rule; persons who have requested advance notice; classes of persons to whom the intended action is directed; and by copy of the proposed rule to the Administrative Procedures Committee the Legislature and the Division of Administrative Hearings in the Department of Administration. A proposed rule may not be adopted prior to 21 days after publication in the Florida Administrative Weekly. Adoption is effected by filing with the Secretary of State and becomes effective 20 days after filing; on a later date specified the rule; or on a date required by statute.

Any proposed rule may be disapproved and contested by the Administrative Procedures Committee as not within the statutory authority upon which it is based. In addition to Committee disapproval, a proposed rule not related exclusively to agency organization, practice, or procedure may be contested in other ways. The agency, upon the request of any affected person received within 14 days after the date of publication of notice in the Florida Administrative Weekly, is required to give such person an opportunity to present evidence and argument on all issues under consideration. A substantially affected person may, by petition filed with he Division of Administrative

Hearings or the agency, seek an administrative determination of the validity of the proposed rule on the ground that it is an invalid exercise of validly delegated legislative authority or an exercise of invalidly delegated legislative authority.

The matters presented by an affected person who has been given an opportunity to present evidence and argument concerning a proposed rule will presumably be given appropriate consideration and weight by the agency in making a final determination as to adoption or modification of the proposed rule.

The petition of a substantially affected person who seeks an administrative determination of the validity of a proposed rule triggers a hearing before a hearing officer for decision. If the hearing officer decides the proposed rule is wholly or partly invalid, the invalid rule or portion thereof may not be adopted. The hearing officer's decision is subject to judicial review.

If it disapproves a proposed rule the Administrative Procedures Committee is required to certify that fact, with a statement of its objections, to the agency prior to the time the rule becomes effective. The agency is required, within 30 days, to: modify the proposed rule; meet Committee objections; withdraw the rule; or refuse to modify the rule. Rules modified by the agency must be resubmitted to the Committee. If the agency declines to withdraw or modify the rule and proceeds to file with the Secretary of State for adoption, the Committee is required to file its disapproval and statement of objections with the Secretary of State for publication in the Florida Administrative Weekly. This procedure does not apply to emergency rules, although copies of such rules must be forwarded to the Committee.

An agency may adopt an emergency rule if it finds that an immediate danger to the public health, safety, or welfare requires such action. The act authorizes any procedure which is fair under the circumstances and which protects statutory and state and federal constitutional rights. An adopted emergency rule may become effective immediately on filing. It may not remain

effective for a period of more than 90 days and is not renewable. The agency, however, may take identical action by normal rulemaking procedures.

The act requires the Administration Commission to file one or more sets of model rules of procedure with the Department of State on January 1, 1975. Such rules become the rules of procedure for each agency subject to the act to the extent that the agency has not adopted a specific rule of procedure covering the subject matter. An agency may amend model rules to conform to any requirement imposed as a condition precedent to the receipt of federal funds; to permit persons in the state to receive tax benefits under federal law; or as required for the most efficient operation of the agency as determined by the Administration Commission.

The act reserves to the Legislature the authority to establish penalties for violation of a rule and declares that no agency has inherent rule-making authority.

Any person regulated by an agency or having a substantial interest in an agency rule may petition the agency to adopt a rule or amend or repeal an adopted rule. Also, each agency is required to provide a procedure by rule for the filing and prompt disposition of petitions for declaratory statements as to the applicability of any statutory provision or of any existing rule or order of the agency. In addition, any person substantially affected by an adopted rule may seek an administrative determination of its legal validity by petition and hearing as in the case of a proposed rule.

Administrative Adjudication

As distinguished from rule-making proceedings, administrative adjudication proceedings, described in the act as all proceedings in which the substantial interests of a party are determined by an agency, are categorized as formal and informal.

A formal proceeding is required in cases involving a disputed issue of material fact, unless waived by all parties and the agency involved. Such

hearing must be conducted by a hearing officer assigned by the Division of Administrative Hearings, except hearings before agency heads other than those within the Department of Professional and Occupational Regulation; before member of an agency head other than agency heads within the Department of Professional and Occupational Regulation; before the Industrial Relations Commission, judges of industrial claims, unemployment compensation appeals referees; before the Public Service Commission or its examiners; hearings regarding drivers' licensing; hearings within the Division of Family Services of the Department of Health and Rehabilitative Services; and hearings to which the Division of Administrative Hearings is a party.

All parties to a formal hearing are entitled to at least 14 days notice thereof in which to respond; to present evidence and argument on all issues involved; to conduct cross-examination and submit rebuttal evidence; to submit proposed findings of fact and orders; to file exceptions to any hearing officer's recommended order or agency order; and to be represented by counsel. The act specifies the content of the record in detail, including provisions for preserving all testimony in the proceeding and making a full or partial transcript; thereof available at actual cost upon request of any party. The content of the hearing officer's recommended order are specified. The agency may adopt the recommended order as its final order. If it does not do so, the act sets forth the limits within which the agency may act in dealing with the findings of fact, conclusions of law, interpretation of administrative rules, and penalties contained in the recommended order.

The act prohibits ex parte communications to a hearing officer relative to the merits of the proceeding by an agency head or member; any other public employee engaged in prosecution or advocacy in the matter; any party to the proceeding; or any person or his representative having a substantial interest in the proposed agency action. The hearing officer is required to place any such communication on the record, advising all parties and permitting rebuttal. A civil penalty up to \$500 or other disciplinary action is provided for violation of this provision.

When a formal hearing is not required by the act, an informal proceeding may be held in accordance with agency rules, subject to basic requirements in the act as to reasonable notice; opportunity to present written evidence to the agency or a hearing officer; and the record of such informal proceedings.

All final orders in a proceeding which affects substantial interests must be rendered within 90 days: after the hearing is concluded if conducted by the agency; after a recommended order is submitted to the agency and mailed to all parties if conducted by a hearing officer; or after the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing. Each party or his attorney of record is entitled to a copy of the final order.

The administrative function of licensing is specifically referred to in the act. An applicant whose license application has been denied is entitled to a formal hearing or opportunity to present evidence in an informal proceeding, depending upon the circumstances. Prior to instituting proceedings to revoke, suspend, annul, or withdraw any license, the agency must give the licensee notice of the proposed grounds and an opportunity to show that he has complied with all lawful requirements for retention of the license. Summary suspension may be ordered in cases involving immediate serious danger to the public health, safety, or welfare, but formal suspension or revocation proceedings must also be promptly instituted.

The act sets forth standards relating to the issuance of and compliance with subpoenas, the discovery of evidence, and the admission of evidence as to all agency proceedings leading to the adoption of a rule or issuance of a final order. The right of cross-examination is expressly provided.

Any party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable, if review of the final agency decision would not provide an adequate remedy. Except in matters for which judicial review by the supreme court is provided by law, review is by petition in the district

court of appeal in the district where the agency maintains its headquarters or where a party resides. Review proceedings are in accordance with the Florida Appellate Rules and the provisions of the act.

Enforcement of agency action is provided by petition in the circuit court where the subject matter of the enforcement is located. Such petition may be initiated by any agency or by any substantially interested person who is a resident of the state, conditioned in the latter case upon the petitioner's having given prior notice of the violation to the head of the agency concerned, the attorney general, and the alleged violator of the agency action.

Each agency is required to make available for public inspection and copying, at no more than cost, all rules formulated, adopted, or used by the agency in the discharge of its functions; all agency orders; and a current subject matter index identifying for the public any rule or order issued or adopted after January 1, 1975. All rules adopted pursuant to the act must be indexed within 90 days. No agency rule or order is valid for any purpose until it has been made available for public inspection as required by the act unless the person or party against whom enforcement is sought has actual knowledge of such rule or order.

Hearing Officers

The Division of Administrative Hearings, created within the Department of Administration, is to be headed by a Director appointed by the Administration Commission and confirmed by the Senate. It is the duty of the Division to employ or contract for hearing officers to conduct hearings required by the act or other law. The Division is authorized to establish qualifications for hearing officers, subject to the provision that no person may be employed as a full time hearing officer unless he has been a member of The Florida Bar in good standing for the preceding three years. The act provides that all hearing officers who conduct formal proceedings, except agency heads or members thereof or Public Service Commission hearing examiners in rate-making proceedings, shall be employees of or on contract to the Division. It also

provides that for two years after January 1, 1975, “the agency or its designee may conduct the hearing if a full-time hearing officer conducts the hearing or if the Division advises the agency that it cannot provide a hearing officer within a reasonable time.” A division revolving trust fund is created as a depository of Division receipts and from which Division expenditures may be made. Beginning July 1, 1975, all costs of administering the Division will be paid to the division trust fund on a pro-rata basis by the agencies using its services.

Legislative Oversight

The Administrative Procedures Committee created by the act is a standing joint committee of the Legislature consisting of six members, three each appointed by the Speaker of the House of Representatives and the President of the Senate. The act establishes the function of the committee as not only to review proposed agency rules, but to advise agencies whenever repeal, amendment, holding of a court of last resort, or other factor changes the statutory authority upon which administrative rules are based, and to generally review agency rules and actions under the act and the operation of the act itself.

Transition

In transition from the prior to the new Administrative Procedures Act, all administrative adjudicative proceedings begun prior to January 1, 1975, shall be continued to conclusion under the provisions of the Florida Statutes, 1973. Such proceedings, which have not progressed to the stage of a hearing may, with the consent of all parties and the agency, be conducted in accordance with the act as nearly as feasible. Notwithstanding the provisions of the new act, all public utilities and companies regulated by the Public Service Commission are entitled to proceed under the interim rate provisions as provided by law. All existing rules must be indexed by January 1, 1975, and if not adopted, following a public hearing as provided by statute are void after October 1, 1975. All rules in effect

on January 1, 1975, or filed with the Department of State prior to this date, except those adopted following a public hearing as provided by statute, are required to be promptly reviewed by the agency if a person substantially affected by the rule makes a written request for such review. If the agency fails to initiate rule-making procedures within 90 days of the receipt of such request, the operation of the rule is suspended.

The Division of Statutory Revision of the Joint Legislative Management Committee is directed by the act to prepare a reviser's bill to conform the Florida Statutes to the act's intent that it replace all other provisions of the Florida Statutes, 1973, relating to rule-making, agency orders, administrative adjudication or judicial review, except for marketing orders adopted pursuant to statutory law.

DEPARTMENTAL REORGANIZATION

Department of Criminal Law Enforcement

Committee Substitute for Committee Substitute for House Bill 3740 (Chapter 74-) reorganizes the Department of Law Enforcement as the Department of Criminal Law Enforcement and transfers to it the functions of the Police Standards Board now in the Department of Community Affairs. It creates Divisions of Law Enforcement, Local Law Enforcement Assistance, Criminal Justice Information Systems, Standards and Training, and Staff Services. Each division is headed by a director and the Department by an executive